

REMARKS

Claims 1, 3, 4, 6-14, 16-22, 24-36 and 41-49 are pending in the application. Claims 1, 3, 4, 6-14, 16-22, 24-36 and 41-49 stand rejected. No new matter has been introduced into the application. As explained in more detail below, Applicants submit that all claims are in condition for allowance and respectfully request such action.

Claim Rejections – 35 USC § 103

Claims 1, 3, 4, 6-14, 16-22, 24-36, and 41-49 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 6,269,285 to Mignault (“Mignault”) in view of U.S. Publication No. 2005/0279722 to Ali (“Ali”).

Claim 1 recites, among other features, “an indicia strip containing a pattern of bits.” The Action concedes that “Mignault differs from the claimed invention in that the locator device is not shown to be an indicia strip containing a pattern of bits.” See Office Action, page 3. The Action relies on Ali to disclose an indicia strip containing a pattern of bits. Specifically, the Action points to the encoder strip 40 and the description of the decoder strip 40 in paragraphs 77-79 of Ali to show the claimed indicia strip. Without conceding that Ali cures the admitted deficiencies of Mignault, Applicant submits that Ali is improper prior art for the portion relied on. The instant application was filed on February 3, 2004. Ali was filed on August 23, 2005. Ali is a continuation-in-part of Application Serial No. 10/924,665, filed on August 23, 2004 which claims priority to provisional application No. 60/497,437, filed on August 22, 2003. Notably, neither Application Serial No. 10/924,665 or Provisional Application 60/497,437 disclose the encoder strip described in Ali and relied on in the Action. Accordingly, the portion of Ali disclosing the encoder strip 40 and relied on by the Action is an improper prior art reference to the instant application. Accordingly, claim 1 is allowable over Mignault in view of Ali.

Independent claims 13, 21, and 45 contain similar features as those in independent claim 1. Therefore, claims 13, 21, and 45 are all allowable over Mignault in view of Ali for at least the reasons discussed with respect to claim 1. Claims 3-4 and 6-12, 14-16, 22 and 24-25, and 46-47 all depend directly or indirectly from their base claims 1, 13, 21, and 45, respectively, and are allowable over Mignault in view of Ali for at least the reasons as their ultimate base claim.

Independent claim 17 recites, “an indicia strip configured to provide a representation in a pattern reflecting the position of the pusher assembly on the shelf,” and “a sensor assembly configured to transmit a pusher code, the pusher code based on the representation on the indicia strip.” As discussed in the previous response to the Office Action mailed September 3, 2008, Mignault discloses multiple sensors that produce an output signal in response to a magnetic field created by a magnet. Mignault fails to disclose an indicia strip configured to *provide a representation in a pattern reflecting the position of the pusher assembly on the shelf*, as recited in claim 17. Furthermore, Mignault does not disclose a sensor assembly configured to transmit a pusher code based on the representation on the indicia strip, as recited in claim 17. Ali fails to cure the deficiencies of Mignault. Accordingly, claim 17 is allowable over Mignault in view of Ali.

Independent claims 26, 31, 34, 41, and 48 contain similar features to claim 17. Thus, claims 26, 31, 34, 41, and 48 are allowable over Mignault in view of Ali for at least the reasons discussed with respect to claim 17. Claims 18-20, 27-30, 32-33, 35-36, and 42-44 depend from independent claims 17, 26, 31, 34, and 41 respectively, and are allowable over Mignault in view of Ali for at least the reasons as their base claim.

Applicant respectfully requests withdrawal of this rejection.

CONCLUSION

The Applicants respectfully request consideration of the application and allowance of all pending claims. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,
BANNER & WITCOFF, LTD.

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By: /Stephanie L. Knapp/
Stephanie L. Knapp
Reg. No. 62,473
1100 13th Street NW, Suite 1200
Washington, DC 20005
Telephone: 202-824-3000